

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH STAFFORD, an individual,)	
)	2:04-cv-0047-GEB-PAN
Plaintiff,)	
)	<u>TRANSMISSION TO PARTIES</u>
)	<u>OF TRIAL DOCUMENTS</u>
v.)	
)	
UNITED TREASURES, INC., a)	
Washington corporation,)	
)	
Defendant.)	
_____)	

The attached voir dire questions, preliminary jury instructions, closing jury instructions, and verdict form are provided to the parties for their consideration.

Plaintiff's proposed voir dire has been considered but the precise questions submitted will not be asked because they are not pertinent enough to the purpose of voir dire.¹ The purpose of voir dire is to "fairly and adequately" probe a juror's qualifications. United States v. Toomey, 764 F.2d 678, 683 (9th Cir. 1985) (indicating that a party "is not necessarily entitled to test the jurors on their capacity to accept his theory of the case.").

¹ Defendant did not propose any voir dire questions.

1 Plaintiff and Defendant's proposed jury instructions omitted
2 or provided inadequate instructions for several issues. The parties
3 are requested to provide adequate proposed jury instructions for
4 contract conditions as they relate to the breach of contract and
5 breach of implied covenant claims, the trebling of damages for
6 trademark infringement, the awarding of attorney fees, the meaning of
7 "use in commerce" within the false designation of origin instruction,
8 and the calculation of damages. Specific to the issue of damages,
9 proposed jury instructions are requested for the calculation of
10 special damages for the breach of contract and breach of implied
11 covenant claims, the calculation of general damages for the breach of
12 implied covenant claim, the calculation of defendant's profit for the
13 false designation of origin and false trademark registration claims,
14 and the calculation of actual damages for the false trademark
15 registration claim. Additionally, proposed instructions are requested
16 for all aspects of awarding statutory damages for copyright
17 infringement.²

18 In some instances the proposed jury instructions covered
19 matters disposed of by the Final Pretrial Order either because they
20 were not preserved for trial or because the fact is undisputed. I
21 have omitted these matters from the draft jury instructions.

22 Also, the Plaintiff and Defendant's proposed verdict forms
23 omitted or were not clear as to some issues. The parties are
24 requested to provide clear verdict form questions as to the jury's
25

26 ² "All aspects" includes when statutory damages are
27 appropriate, whether the jury can award damages for some but not
28 all of the works, how the jury decides which statutory range to
use, and what factors should guide the jury in fixing an amount
with in the statutory range.

1 verdict on the false trademark registration claim, the appropriateness
2 of attorney fees for the trademark and copyright infringement claims,
3 and the awarding of statutory damages for copyright infringement. It
4 should also be noted that changes to jury instructions may effect the
5 verdict form; parties are requested to consider the effects any
6 proposed jury instructions may have and submit the proposed changes to
7 the verdict form accordingly.

8 Adequate proposed instructions and clear verdict form
9 questions for the above issues must be filed by September 9, 2005, or
10 the jury will not be instructed as to these issues.³ Moreover, if a
11 party disagrees with or desires a modification of any of the attached
12 trial documents, that party shall file a proposed change by
13 September 9, 2005, with an explanation as to why the proposed change
14 is required and the authority supporting the change.

15 Dated: August 26, 2005

16
17 /s/ Garland E. Burrell, Jr.
18 GARLAND E. BURRELL, JR.
19 United States District Judge
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25
26 ³ The parties are directed to meet and confer and attempt
27 to agree on a joint submission in response to this order. Such
28 independent proposals shall be accompanied by a statement as to
the nature of the dispute and the legal authority supporting the
proposal.